

SENATE BILL No. 460

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4; IC 13-11-2-160; IC 13-12-3-2; IC 13-14-2; IC 13-23; IC 13-25-5-18; IC 13-30-11; IC 36-1; IC 36-2-4-8; IC 36-3-4-14; IC 36-4-6-14; IC 36-5-2-10.

Synopsis: Environmental land use restrictions. Establishes the environmental trust within the Indiana finance authority (IFA) to: (1) inventory certain environmental restrictive covenants; (2) create public computerized registries of the covenants and of local ordinances that establish certain land use restrictions; (3) monitor compliance with the covenants and report noncompliance to the department of environmental management (IDEM) and the attorney general; and (4) administer an environmental trust fund that is funded by fees imposed on owners of real property subject to the covenants and used to fund the operations of the environmental trust. Establishes consequences for failure to pay the fee. Provides that the state, the IFA, and the environmental trust are not liable for acts or omissions related to maintenance of the inventory and the registries. Provides that the accuracy and completeness of information in the inventory and the registries is not warranted. Requires the environmental trust or its director to: (1) establish a future sliding fee scale based on the relative costs of monitoring compliance among various tracts of real property subject to restrictive covenants; (2) consider means of applying environmental trust activities to privately established environmental restrictive covenants and those established before trust activities begin; and (3) consider the feasibility of incorporating notice of environmental restrictive covenants and restrictive ordinances into the "One Call" system. Expands the application of remediation and closure goals, objectives, and standards. Eliminates the authority of IDEM to approve environmental restrictive covenants, delineates which elements of covenants are subject to IDEM approval, delineates the authority of

(Continued next page)

Effective: Upon passage; July 1, 2009.

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January 14, 2009, read first time and referred to Committee on Energy and Environmental Affairs.



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IDEM to enforce covenants, and eliminates IDEM authority to require compliance reports from property owners. Permits reimbursement of a property owner from the underground petroleum storage tank excess liability trust fund of fees paid to the environmental trust. Provides that a covenant not to sue does not apply to future liability for a condition on property involved in a voluntary remediation work plan only if the condition was present on the property at the time the commissioner issued the certificate of completion. Allows IDEM to include in a certificate of completion or a covenant not to sue conditions that must be performed or maintained after issuance of the certificate or covenant. Provides that the exceptions that apply to liability to the state relating to contamination from hazardous substances apply in the same manner to liability to the state relating to contamination from petroleum. With respect to local ordinances that establish certain land use restrictions: (1) requires that a municipal corporation give notice to IDEM not later than 60 days before amendment or repeal and to the environmental trust not later than 30 days after passage, amendment, or repeal; (2) requires that the ordinance state those notice requirements; and (3) provides that the ordinance is considered adopted only if it states those notice requirements. Establishes the advisory committee on environmental trust issues.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 460

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-4-10.9-6.7 IS ADDED TO THE INDIANA
- 2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2009]: **Sec. 6.7. "Environmental trust"** refers
- 4 **to the environmental trust established by IC 4-4-11-46.**
- 5 SECTION 2. IC 4-4-10.9-24.7 IS ADDED TO THE INDIANA
- 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 7 [EFFECTIVE JULY 1, 2009]: **Sec. 24.7. "Restrictive covenant"** has
- 8 **the meaning set forth in IC 13-11-2-193.5.**
- 9 SECTION 3. IC 4-4-10.9-24.8 IS ADDED TO THE INDIANA
- 10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 11 [EFFECTIVE JULY 1, 2009]: **Sec. 24.8. "Restrictive ordinance"**
- 12 **means, with respect to land, any ordinance that:**
- 13 (1) **is adopted by a municipal corporation (as defined in**
- 14 **IC 36-1-2-10); and**
- 15 (2) **limits the use of the land or the activities that may be**



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performed on or at the land or requires the maintenance of any engineering control on the land designed to protect human health or the environment.

SECTION 4. IC 4-4-10.9-27.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 27.8. "Tract" means any area of land that is under common ownership and is contained within a continuous border.**

SECTION 5. IC 4-4-11-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9.5. The governor shall appoint the director of the environmental trust, who shall:**

- (1) serve at the pleasure of the governor;**
- (2) administer, manage, and direct the affairs and activities of the environmental trust and the employees of the environmental trust in accordance with the policies and under the control and direction of the members of the authority;**
- (3) approve all accounts for salaries, allowable expenses of the environmental trust or of any employee or consultant, and expenses incidental to the operation of the environmental trust; and**
- (4) perform other duties as may be directed by the members of the authority in carrying out the purposes of the environmental trust.**

SECTION 6. IC 4-4-11-11, AS AMENDED BY P.L.235-2005, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) The authority may, without the approval of the attorney general or any other state officer, employ bond counsel, other legal counsel, technical experts, and such other officers, agents, and employees, permanent or temporary, as it considers necessary to carry out the efficient operation of the authority and the environmental trust, and shall determine their qualifications, duties, compensation, and terms of service. The authority shall fix the compensation of:**

- (1) the public finance director; and**
- (2) the director of the environmental trust.**

(b) The members of the authority may adopt a resolution delegating to:

- (1) a member of the authority;**
- (2) the public finance director;**
- (3) the director of the environmental trust; or**
- (4) one (1) or more agents or employees of the authority;**

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administrative duties that they consider proper, including the powers of the authority set forth in this section **and the powers of the environmental trust set forth in section 46 of this chapter.**

(c) Employees of the authority **and the environmental trust** shall not be considered employees of the state.

SECTION 7. IC 4-4-11-31, AS AMENDED BY P.L.162-2007, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 31. The authority:

(1) may create and establish any funds and accounts necessary or desirable for its purposes; **and**

(2) **shall establish the environmental trust fund referred to in section 46(b) of this chapter.**

SECTION 8. IC 4-4-11-46 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 46. (a) **There is established within the authority the environmental trust.**

(b) **The operations of the environmental trust are funded solely from the environmental trust fund established under section 31(2) of this chapter. The fund:**

(1) **shall be administered by the environmental trust;**

(2) **may not be used for any purpose other than funding the operations of the environmental trust; and**

(3) **consists of:**

(A) **fees deposited in the fund under subsection (c)(8);**

(B) **appropriations to the fund from the general assembly;**

(C) **grants, gifts, and donations intended for deposit in the fund; and**

(D) **interest that accrues from money in the fund.**

The expenses of administering the fund shall be paid from money in the fund. The environmental trust shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(c) **The environmental trust shall do the following:**

(1) **Inventory by tract restrictive covenants throughout Indiana that are:**

(A) **recorded as described in IC 13-11-2-193.5(3) after 2009; and**

(B) **established as a part of a plan approved by either or both of the following:**

(i) **The department of environmental management.**

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- 1 (ii) The United States Environmental Protection Agency.
- 2 (2) Create a computerized registry by tract of restrictive
- 3 covenants referred to in subdivision (1) that is accessible to
- 4 the public.
- 5 (3) Create a computerized registry of restrictive ordinances
- 6 throughout Indiana.
- 7 (4) Give notice reasonably calculated to inform the public of
- 8 the registries referred to in subdivisions (2) and (3).
- 9 (5) Monitor compliance throughout Indiana with restrictive
- 10 covenants referred to in subdivision (1).
- 11 (6) Report to the department of environmental management
- 12 and the attorney general noncompliance with restrictive
- 13 covenants referred to in subdivision (1).
- 14 (7) Collect fees under subsection (d).
- 15 (8) Deposit fees collected under subdivision (7) in the
- 16 environmental trust fund established under section 31(2) of
- 17 this chapter.
- 18 (d) Except as provided in subsection (e), the owner of a tract
- 19 subject to one (1) or more restrictive covenants referred to in
- 20 subsection (c)(1) is liable for a fee in the amount of five thousand
- 21 dollars (\$5,000).
- 22 (e) Before 2011, the environmental trust shall establish by rule
- 23 a schedule of graduated fees based on the relative costs of
- 24 monitoring compliance under subsection (c)(5) among various
- 25 tracts of real property subject to restrictive covenants. The
- 26 schedule of graduated fees under this subsection applies in lieu of
- 27 the fee under subsection (d) to owners of real property subject to
- 28 restrictive covenants throughout Indiana that are:
- 29 (1) recorded as described in IC 13-11-2-193.5(3) after the
- 30 effective date of the rule; and
- 31 (2) imposed as a part of a plan approved by either or both of
- 32 the following:
- 33 (A) The department of environmental management.
- 34 (B) The United States Environmental Protection Agency.
- 35 (f) A fee imposed under subsection (d) or (e) is payable to the
- 36 environmental trust not later than thirty (30) days after the
- 37 recording of the restrictive covenant as described in
- 38 IC 13-11-2-193.5(3). If the fee is not paid by that deadline:
- 39 (1) the environmental trust shall provide to the attorney
- 40 general the information necessary for commencement of a
- 41 collection action; and
- 42 (2) the approval by the department of environmental

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management of the:

(A) remediation;

(B) closure;

(C) cleanup; or

(D) corrective action;

under which the restrictive covenant was executed is void.

(g) The following are immune from civil or criminal liability for any act or omission related to the performance of duties under subsection (c)(1) through (c)(3):

(1) The state, the authority, and the environmental trust.

(2) Officers, agents, and employees of the state, the authority, and the environmental trust, either personally or in their official capacities.

(h) The accuracy and completeness of information in an inventory under subsection (c)(1) and of information in a registry under subsection (c)(2) or (c)(3) is not warranted by any of the following:

(1) The state.

(2) The authority.

(3) The environmental trust.

SECTION 9. IC 13-11-2-160 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 160. "Petroleum", for purposes of:

(1) IC 13-23;

(2) IC 13-24-1; and

(3) IC 13-25-5; and

(4) IC 13-30-11;

includes petroleum and crude oil or any part of petroleum or crude oil that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit (60°F) and fourteen and seven-tenths (14.7) pounds per square inch absolute).

SECTION 10. IC 13-12-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The remediation and closure goals, objectives, and standards for **activities all remediation projects** conducted under ~~IC 13-22~~ and ~~IC 13-23~~ **this title** shall be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

(b) The groundwater quality standards adopted under IC 13-18-17-5 shall allow ~~as appropriate~~, groundwater remediations to be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

SECTION 11. IC 13-14-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. Except as provided

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in IC 13-14-6, the commissioner may proceed in court, by appropriate action, to:

- (1) enforce any final order of the commissioner or of one (1) of the boards;
- (2) collect any penalties or fees;
- (3) procure or secure compliance with this title or any other law that the department has the duty or power to enforce;
- (4) procure compliance with any standard or rule of one (1) of the boards; ~~or~~
- (5) enforce a restrictive covenant (as defined in IC 13-11-2-193.5) **in accordance with the terms of the covenant if the covenant is:**

(A) executed before July 1, 2009;

(B) approved by the commissioner; and

(C) created in connection with any remediation, closure, cleanup, or corrective action under this title; ~~in accordance with the terms of the covenant; or~~

(6) enforce a restrictive covenant (as defined in IC 13-11-2-193.5) in accordance with the terms of the covenant if the covenant is:

(A) executed after June 30, 2009; and

(B) created in connection with any of the following approved by the department under this title:

(i) A remediation.

(ii) A closure.

(iii) A cleanup.

(iv) A corrective action.

SECTION 12. IC 13-14-2-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. (a) Subject to subsection (b), a restrictive covenant executed after June 30, 2009, is not subject to approval by the department.**

(b) The department may:

(1) review; and

(2) approve, disapprove, or partially approve and partially disapprove;

activities and land use restrictions described in IC 13-11-2-193.5(1) that are proposed as part of a remediation, closure, cleanup, or corrective action to be included in a restrictive covenant.

(c) After 2009 the department may not require the owner of a tract that has paid a fee under IC 4-4-11-46(d) or IC 4-4-11-46(e) with respect to the tract to report to the department the extent of

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1 **compliance with a restrictive covenant that:**

2 **(1) applies to the tract; and**

3 **(2) is the basis of the imposition of the fee.**

4 SECTION 13. IC 13-23-8-1 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The department,
6 under rules adopted by the underground storage tank financial
7 assurance board under IC 4-22-2, shall use money in the excess
8 liability trust fund, to the extent that money is available in the excess
9 liability trust fund, to pay claims submitted to the department for the
10 following:

11 (1) The payment of the costs allowed under IC 13-23-9-2,
12 excluding:

13 (A) liabilities to third parties; and

14 (B) the costs of repairing or replacing an underground storage
15 tank;

16 arising out of releases of petroleum.

17 (2) Providing payment of part of the liability of owners and
18 operators of underground petroleum storage tanks:

19 (A) to third parties under IC 13-23-9-3; or

20 (B) for reasonable attorney's fees incurred in defense of a third
21 party liability claim.

22 **(3) Reimbursement of a fee that is:**

23 **(A) paid by the owner of a tract under IC 4-4-11-46(d) or**
24 **IC 4-4-11-46(e); and**

25 **(B) payable because the tract is subject to one (1) or more**
26 **restrictive covenants established to address issues related**
27 **to an underground storage tank located on the tract.**

28 SECTION 14. IC 13-23-9-1 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The administrator of
30 the excess liability trust fund shall process, approve, and deny requests
31 made for payments from the excess liability trust fund under sections
32 2, and 3, and 3.5 of this chapter.

33 SECTION 15. IC 13-23-9-3.5 IS ADDED TO THE INDIANA
34 CODE AS A NEW SECTION TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2009]: Sec. 3.5. (a) To receive money from
36 the excess liability trust fund under IC 13-23-8-1(3), a claimant
37 must submit to the administrator of the excess liability trust fund
38 for the administrator's approval a copy of a receipt from the
39 environmental trust for payment of a fee referred to in
40 IC 13-23-8-1(3).

41 (b) If, after receiving a receipt submitted under subsection (a),
42 the administrator determines that the receipt is valid, the

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1 administrator shall approve the request for money to be paid from
2 the excess liability trust fund for reimbursement of the fee.

3 (c) The administrator shall notify the claimant of an approval
4 or a denial of a claim made under subsection (a) not later than
5 sixty (60) days after receiving the request. Except as provided in
6 subsection (f), the administrator shall notify the claimant of all
7 reasons for a denial or partial denial.

8 (d) Not later than seven (7) days after a request is approved by
9 the administrator under subsection (b), the administrator shall
10 forward a copy of a request approved under this section to the
11 auditor of state.

12 (e) Not later than thirty (30) days after receiving an approved
13 request under this section, the auditor of state shall pay to the
14 claimant that submitted the approved receipt the approved amount
15 from money available in the excess liability trust fund.

16 (f) If the administrator denies a claim made under subsection
17 (a), the administrator shall notify the claimant in writing not later
18 than sixty (60) days after receiving the request. The claimant has
19 thirty (30) days after the receipt of the denial to notify the
20 administrator of the claimant's intention to appeal the denial. If the
21 claimant does not notify the administrator of an intention to appeal
22 in the time provided, further review of the application is not
23 required. If an intention to appeal is submitted within the time
24 provided, the administrator has thirty (30) days after the receipt
25 of the notice of the intention to appeal to provide the claimant with
26 all additional reasons for the denial or partial denial of the request
27 or to specify that all reasons have been provided. The claimant has
28 thirty (30) days after receiving notification from the administrator
29 of all additional reasons for the denial or partial denial or notice
30 specifying that all reasons have been provided to file a petition for
31 review of the denial or partial denial.

32 SECTION 16. IC 13-23-9-4 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. If the administrator
34 denies a request made under section 2, ~~or 3~~, **or 3.5** of this chapter, the
35 owner or operator who made the request may appeal the denial under
36 IC 4-21.5 to the office of environmental adjudication under
37 IC 4-21.5-7.

38 SECTION 17. IC 13-25-5-18 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. (a) If the
40 commissioner issues a certificate to a person under section 16 of this
41 chapter, the governor shall also provide the person with a covenant not
42 to sue for any liability, including future liability, or a claim resulting

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from or based upon the release or threatened release of a hazardous substance or petroleum that is addressed by an approved voluntary remediation work plan under this chapter.

(b) A covenant not to sue issued under this section bars suit against:

(1) a person who received the certificate of completion under section 16 of this chapter; or

(2) any other person who receives the certificate of completion:

(A) through a legal transfer of the certificate of completion; or

(B) by acquiring property to which the certificate of completion applies;

from all public or private claims arising under this title or rules adopted under this title in connection with the release or threatened release of a hazardous substance or petroleum that was the subject of the approved voluntary remediation work plan, except as provided in subsection (c).

(c) A covenant not to sue issued under this section may not apply to future liability for a condition or the extent of a condition that:

(1) was present:

(A) on property that was involved in an approved and completed voluntary remediation work plan; and

(B) at the time the commissioner issued the certificate of completion under section 16 of this chapter; and

(2) was not known to the commissioner at the time the commissioner issued the certificate of completion under section 16 of this chapter.

(d) The commissioner may include in a certificate of completion issued under section 16 of this chapter conditions that must be performed or maintained after issuance of the certificate.

(e) The commissioner may include in a covenant not to sue issued under this section conditions that must be performed or maintained after issuance of the covenant.

~~(d)~~ **(f)** Except as:

(1) provided under federal law; or

(2) agreed to by a federal governmental entity;

a covenant not to sue issued under this section may not release a person from liability to the federal government for claims based on federal law.

~~(e)~~ **(g)** After an applicant and the department have signed a voluntary remediation agreement, a person may not bring an action, including an administrative action, against the applicant or any other person proceeding under this chapter on behalf of the applicant for any cause of action arising under this title or rules adopted under this title

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and relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the agreement. However, this section does not apply if:

- (1) the applicant fails to file a proposed voluntary remediation work plan within the time period established in section 8(a)(8) of this chapter;
- (2) the commissioner rejects a proposed voluntary remediation work plan submitted in good faith and the rejection is upheld in any appeal brought under section 12 of this chapter;
- (3) the applicant or another person proceeding under this chapter on behalf of the applicant fails to complete a voluntary remediation in accordance with an approved voluntary remediation work plan; or
- (4) the commissioner withdraws the commissioner's approval of the voluntary remediation work plan and the withdrawal is upheld in any appeal under section 19 of this chapter.

However, if the commissioner withdraws approval of the plan under section 19(a)(2) of this chapter, the commissioner may bring an action, including an administrative action, against the applicant.

~~(f)~~ **(h)** A person who purchases property that is the subject of a voluntary remediation agreement at the time the property is purchased may not be subject to an enforcement action to the same extent as an applicant under subsection ~~(e)~~ **(g)**.

SECTION 18. IC 13-30-11 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 11. Exceptions to Liability

Sec. 1. Subject to section 2 of this chapter, the exceptions under IC 13-25-4-8(b) that apply to liability to the state described in IC 13-25-4-8(a) relating to contamination from hazardous substances apply in the same manner to liability to the state under this title relating to contamination from petroleum.

Sec. 2. The exceptions under section 1 of this chapter that apply to liability to the state under this title relating to contamination from petroleum apply only if the administrative action to enforce the liability was initiated after June 30, 2009.

SECTION 19. IC 34-30-2-2.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2.3. IC 4-4-11-46(g) (Concerning actions of environmental trust).**

SECTION 20. IC 34-30-2-51.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2009]: **Sec. 51.5. IC 13-25-4-8 (Concerning hazardous substances).**

SECTION 21. IC 34-32-2-53.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 53.5. IC 13-30-11-1 (Concerning petroleum).**

SECTION 22. IC 36-1-2-15.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 15.7. "Restrictive ordinance" means, with respect to land, any ordinance that:**

- (1) is adopted by a municipal corporation; and**
- (2) limits the use of the land or the activities that may be performed on or at the land or requires the maintenance of any engineering control on the land designed to protect human health or the environment.**

SECTION 23. IC 36-1-6-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11. (a) The legislative body of a municipal corporation shall:**

- (1) give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of a restrictive ordinance; and**
- (2) give written notice to the environmental trust not later than thirty (30) days after passage, amendment, or repeal of a restrictive ordinance.**

(b) A restrictive ordinance passed or amended after 2009 by the legislative body of a municipal corporation:

- (1) must state the notice requirements of subsection (a); and**
- (2) is considered adopted only if the subdivision (1) requirement is met.**

SECTION 24. IC 36-2-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. (a) Subject to subsection (c)(3), an ordinance, order, or resolution is considered adopted when it is signed by the presiding officer. If required, an adopted ordinance, order, or resolution must be promulgated or published according to statute before it takes effect.**

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published once each week for two (2) consecutive weeks, according to IC 5-3-1. However, if such an ordinance is adopted by the legislative body of a county subject to IC 36-2-3.5 and there is an urgent necessity requiring its immediate effectiveness, it need not be published if:

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- (1) the county executive proclaims the urgent necessity; and
- (2) copies of the ordinance are posted in three (3) public places in each of the districts of the county before it takes effect.

(c) **The following apply** in addition to the other requirements of this section:

(1) An ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 is considered adopted only if it is:

~~(1)~~ (A) approved by signature of a majority of the county executive;

~~(2)~~ (B) neither approved nor vetoed by a majority of the executive, within ten (10) days after passage by the legislative body; or

~~(3)~~ (C) passed over the veto of the executive by a two-thirds (2/3) vote of the legislative body, within sixty (60) days after presentation of the ordinance or resolution to the executive.

(2) **The legislative body of a county shall:**

(A) **give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of a restrictive ordinance; and**

(B) **give written notice to the environmental trust not later than thirty (30) days after passage, amendment, or repeal of a restrictive ordinance.**

(3) **A restrictive ordinance passed or amended after 2009 by the legislative body of a county:**

(A) **must state the notice requirements of subdivision (2); and**

(B) **is considered adopted only if the clause (A) requirement is met.**

(d) After an ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 has been signed by the presiding officer, the county auditor shall present it to the county executive, and record the time of the presentation. Within ten (10) days after an ordinance or resolution is presented to it, the executive shall:

(1) approve the ordinance or resolution, by signature of a majority of the executive, and send the legislative body a message announcing its approval; or

(2) veto the ordinance or resolution, by returning it to the legislative body with a message announcing its veto and stating its reasons for the veto.

(e) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

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(f) An ordinance increasing a building permit fee on new development must:

(1) be published:

(A) one (1) time in accordance with IC 5-3-1; and

(B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and

(2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

SECTION 25. IC 36-3-4-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) **Subject to subsection (h)**, an ordinance or resolution passed by a legislative body is considered adopted when it is:

(1) signed by the presiding officer; and

(2) if subject to veto, either approved by the executive or passed over ~~his~~ **the executive's** veto by the legislative body, under section 16 of this chapter.

(b) All ordinances and resolutions of a legislative body are subject to veto, except the following:

(1) An ordinance or resolution, or part of either, providing for the budget or appropriating money for an office or officer of the county provided for by the Constitution of Indiana or for a judicial office or officer.

(2) An ordinance or resolution approving or modifying the budget of a political subdivision that the legislative body is permitted by statute to review.

(3) A resolution making an appointment that the legislative body is authorized to make.

(4) A resolution selecting officers or employees of the legislative body.

(5) A resolution prescribing rules for the internal management of the legislative body.

(6) A zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(c) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

(1) it is published under subsection (d); or

(2) there is an urgent necessity requiring its immediate effectiveness, the executive proclaims the urgent necessity, and

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copies of the ordinance are posted in three (3) public places in the county.

(d) If a legislative body publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two (2) weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

- (1) of the ordinances in the book or pamphlet;
- (2) of the date of adoption of the ordinances; and
- (3) that the ordinances have been properly signed, attested, recorded, and approved.

(e) Unless a legislative body provides in an ordinance or resolution for a later effective date, the ordinance or resolution takes effect when it is adopted, subject to subsections (c) and (d).

(f) Subsections (a), (c), (d), and (e) do not apply to zoning ordinances or amendments to zoning ordinances, or resolutions approving comprehensive plans, that are adopted under IC 36-7.

(g) The legislative body shall:

- (1) give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of a restrictive ordinance; and**
- (2) give written notice to the environmental trust not later than thirty (30) days after passage, amendment, or repeal of a restrictive ordinance.**

(h) A restrictive ordinance passed or amended after 2009 by the legislative body of a county:

- (1) must state the notice requirements of subsection (g); and**
- (2) is considered adopted only if the subdivision (1) requirement is met.**

SECTION 26. IC 36-4-6-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) **Subject to subsection (g)**, an ordinance, order, or resolution passed by the legislative body is considered adopted when it is:

- (1) signed by the presiding officer; and
- (2) either approved by the city executive or passed over ~~his~~ **the executive's** veto by the legislative body, under section 16 of this chapter.

If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by

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IC 5-3-1, unless:

- (1) it is published under subsection (c); or
- (2) there is an urgent necessity requiring its immediate effectiveness, the city executive proclaims the urgent necessity, and copies of the ordinance are posted in three (3) public places in each of the districts from which members are elected to the legislative body.

(c) Except as provided in subsection (e), if a city publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two (2) weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

- (1) of the ordinances in the book or pamphlet;
- (2) of the date of adoption of the ordinances; and
- (3) that the ordinances have been properly signed, attested, recorded, and approved.

(d) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(e) An ordinance increasing a building permit fee on new development must:

- (1) be published:
 - (A) one (1) time in accordance with IC 5-3-1; and
 - (B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and
- (2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

(f) The legislative body shall:

- (1) give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of a restrictive ordinance; and**
- (2) give written notice to the environmental trust not later than thirty (30) days after passage, amendment, or repeal of a restrictive ordinance.**

(g) A restrictive ordinance passed or amended after 2009 by the legislative body of a county:

- (1) must state the notice requirements of subsection (f); and**
- (2) is considered adopted only if the subdivision (1)**

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requirement is met.

SECTION 27. IC 36-5-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) **Subject to subsection (f)**, an ordinance, order, or resolution passed by the legislative body is considered adopted when it is signed by the executive. If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

(1) it is published under IC 36-1-5; or

(2) it declares an emergency requiring its immediate effectiveness and is posted in:

(A) one (1) public place in each district in the town; or

(B) a number of public places in the town equal to the number of town legislative body members, if the town has abolished legislative body districts under section 4.1 of this chapter.

(c) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(d) An ordinance increasing a building permit fee on new development must:

(1) be published:

(A) one (1) time in accordance with IC 5-3-1; and

(B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and

(2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

(e) The legislative body shall:

(1) give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of a restrictive ordinance; and

(2) give written notice to the environmental trust not later than thirty (30) days after passage, amendment, or repeal of a restrictive ordinance.

(f) A restrictive ordinance passed or amended after 2009 by the legislative body of a county:

(1) must state the notice requirements of subsection (e); and

(2) is considered adopted only if the subdivision (1) requirement is met.

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1 SECTION 28. [EFFECTIVE JULY 1, 2009] (a) The director of the
2 environmental trust established by IC 4-4-11-46, as added by this
3 act, shall do the following:

4 (1) Conduct a study to develop recommendations for policies,
5 rules, and legislation necessary for the environmental trust to
6 inventory, monitor compliance, report noncompliance, and
7 impose fees as described in IC 4-4-11-46(c), as added by this
8 act, with respect to:

9 (A) real property covenants that meet the description of a
10 restrictive covenant under IC 4-4-11-46(c)(1), as added by
11 this act, except that they were recorded before 2010; and

12 (B) real property covenants that meet the description of a
13 restrictive covenant under IC 4-4-11-46(c)(1), as added by
14 this act, except that they are not imposed as a part of a
15 plan approved by either or both of the following:

16 (i) The department of environmental management.

17 (ii) The United States Environmental Protection Agency.

18 (2) Conduct a study and develop recommendations
19 concerning the feasibility of incorporating notice of:

20 (A) environmental restrictive covenants; and

21 (B) restrictive ordinances (as defined in IC 36-1-2-15.7, as
22 added by this act);

23 into the "One Call" system managed by the Indiana
24 Underground Plant Protection Service under IC 8-1-26.

25 (3) Before September 1, 2010, report the results of the studies
26 under subdivisions (1) and (2) to:

27 (A) the governor;

28 (B) the legislative council in an electronic format under
29 IC 5-14-6; and

30 (C) the environmental quality service council.

31 (b) This SECTION expires January 1, 2011.

32 SECTION 29. [EFFECTIVE JULY 1, 2009] (a) As used in this
33 SECTION:

34 (1) "committee" refers to the advisory committee on
35 environmental trust issues established by subsection (b); and

36 (2) "environmental trust" refers to the environmental trust
37 established by IC 4-4-11-46, as added by this act.

38 (b) There is established the advisory committee on
39 environmental trust issues.

40 (c) The committee consists of the following members:

41 (1) One (1) legislator appointed by the president pro tempore
42 of the senate.

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(2) One (1) legislator appointed by the speaker of the house of representatives.

(3) One (1) member appointed by the governor who represents the governor's office.

(4) One (1) member appointed by the governor who represents the Indiana department of environmental management.

(5) One (1) member appointed by the governor who represents the Indiana underground storage tank financial assurance board.

(6) One (1) member appointed by the governor who represents the Indiana real estate commission.

(7) One (1) member appointed by the governor who represents the Indiana economic development corporation.

(d) The chairman of the legislative council shall appoint a chairperson of the advisory committee.

(e) The advisory committee shall do the following:

(1) Advise the director of the environmental trust on policy issues decided on by the advisory committee.

(2) Study issues designated by the legislative council.

(3) Review the mission and goals of the environmental trust and evaluate the implementation of the mission.

(4) Subject to subsection (f), submit to the governor and the legislative council, in an electronic format under IC 5-14-6:

(A) reports at any time; and

(B) a final report before November 1, 2011.

(f) Reports under subsection (e)(4) must include at least the following:

(1) An outline of activities of the advisory committee.

(2) Recommendations for action by the environmental trust.

(3) Recommendations for legislative action.

(g) The advisory committee shall operate under the policies governing study committees adopted by the legislative council.

(h) The affirmative votes of a majority of the voting members appointed to the advisory committee are required for the advisory committee to take action on any measure, including reports.

(i) This SECTION expires December 31, 2011.

SECTION 30. An emergency is declared for this act.

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